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# HIPAA Administrative Simplification And Employer Group Health Plans



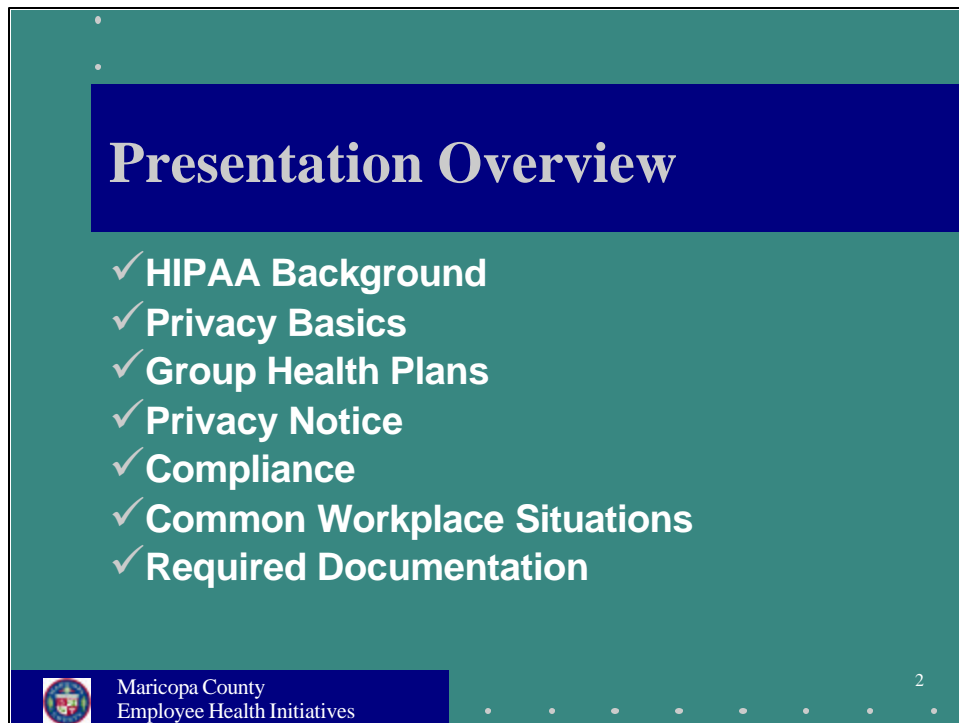
Employee Health Initiatives  
HIPAA Training

Maricopa County  
Employees Health Initiatives

April 3, 2003

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I will be speaking to you today on the administrative simplification provisions of HIPAA, particularly the Privacy Rule and particularly as those rules are applied to employee-sponsored group health plans.




A presentation slide with a teal background and a dark blue header. The header contains the title "Presentation Overview" in white serif font. Below the header, a list of seven topics is shown, each preceded by a white checkmark. At the bottom left, there is a small circular logo and the text "Maricopa County Employee Health Initiatives" in white. At the bottom right, the number "2" is displayed in white. A series of small white dots are arranged horizontally along the bottom edge of the slide.

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## Presentation Overview

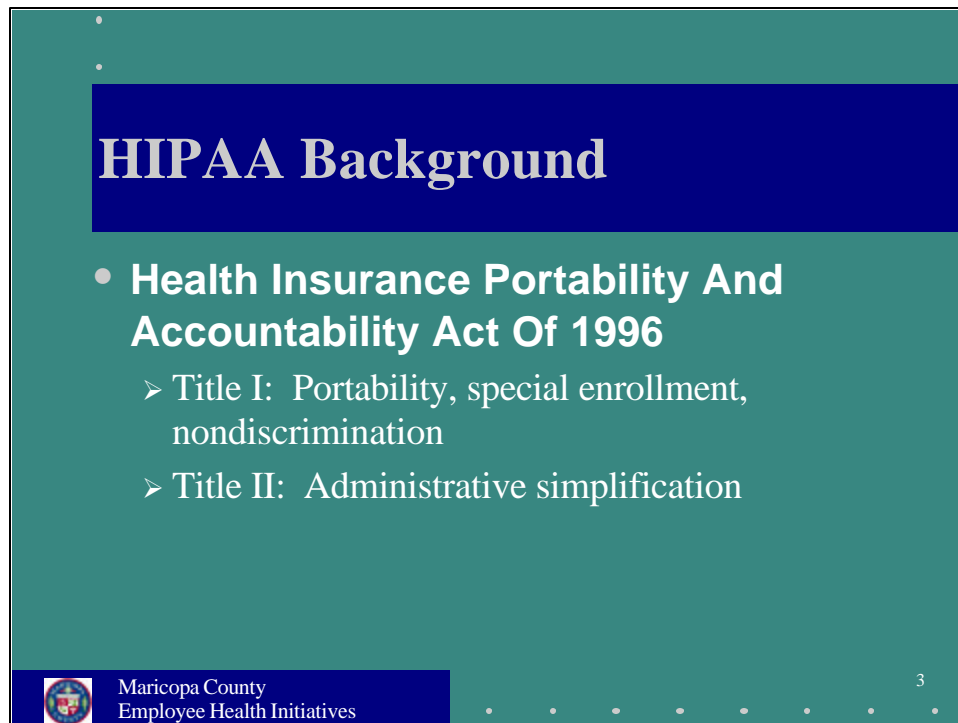
- ✓ HIPAA Background
- ✓ Privacy Basics
- ✓ Group Health Plans
- ✓ Privacy Notice
- ✓ Compliance
- ✓ Common Workplace Situations
- ✓ Required Documentation

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The topics we are going to cover are listed on this slide.



## HIPAA Background

- **Health Insurance Portability And Accountability Act Of 1996**
  - Title I: Portability, special enrollment, nondiscrimination
  - Title II: Administrative simplification

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As noted on this slide, HIPAA is the Health Insurance Portability and Accountability Act of 1996.

Most are familiar with HIPAA because of the health plan's portability, special enrollment, and nondiscrimination requirement that it has given us. That was Title I of HIPAA.

Nondiscrimination – HIPAA prohibits discrimination in benefits eligibility and premiums based on health status-related factors. (Thompson - Tab 100 - page 5)

Title II deals with Administrative Simplification.

## HIPAA Background

- **Administrative Simplification**
- **Intended to create a uniform system of processing, retaining, and securing health care information by:**
  - Encouraging use of electronic technology
  - Mandating standardization
  - Ensuring security and privacy of information



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The rules we are talking about today are all derived from the Administrative Simplification Provisions in Title II of HIPAA.

## HIPAA Background

- **Administrative Simplification Regulations: A Work In Progress**
  - Standards for electronic transactions (final)
  - Privacy regulations (final)
  - Standards for unique identifiers (of four: one final, one proposed)
  - Standards for electronic signature (proposed)
  - Security regulations (proposed)



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In enacting these provisions, Congress hoped to increase the efficiency and decrease the costs of the health system by encouraging the electronic transmission of certain information in standardized form. The regulatory package implementing these provisions is a work in progress, as noted on this slide. Three regulations are in final form, electronic transactions, privacy, and the unique identifier for employers.

## HIPAA Background

- **Why should employers care?**
  - Most employers are indirectly regulated as “plan sponsors” of their health plans
  - Some employers also might be covered directly because of on-site health clinics/services or health data processing functions



“Why should employers care, particularly employers who are not in the health industry”. Employers should care about HIPAA because most will be indirectly regulated under these regulations because of their group health plans. Also, many employers may be directly regulated by something called a **hybrid entity** because of other health services they provide employees or because of health data processing functions they perform.

## HIPAA Background

- **What is the result of being a “covered entity”?**
  - Subject to an extensive regulatory regime that is both invasive and prescriptive
  - Subject to HIPAA Administrative Simplification as well as other applicable federal laws (*e.g.*, ADA, FMLA)
  - Subject to additional preemption issues



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“What is the result of being a covered entity”. If we are indirectly or directly covered under HIPAA, we will be subject to an extensive regulatory regime that is both invasive and prescriptive. Our employee benefits plan will have one more federal law to follow, and we have to worry about State laws with respect to our employee benefit plans, in ways many that we have not previously had to worry about.

Preemptive - When two laws collide, the more restrictive law takes precedence.

## HIPAA Background Key Compliance Date Summary

<b>October 15, 2002</b>	Electronic Transactions extension filing deadline
<b>October 16, 2002</b>	Electronic Transactions original deadline
<b>April 14, 2003</b>	Privacy deadline
<b>October 16, 2003</b>	Electronic Transactions (small health plans and extension filers deadline)
<b>April 14, 2004</b>	Privacy (small health plans deadline)
<b>April 14, 2004</b>	Extended business associate contract deadline



Small health plans have annual receipts of \$5 million or less.



# HIPAA Background

## PENALTIES

- **Civil**
  - \$100 per violation, up to
  - \$25,000 per year per standard
- **Criminal (Knowing Misuse)**
  - Up to \$50,000/1 year imprisonment
  - Higher for false pretenses or intent to sell
- **Enforcement By Office Of Civil Rights**
  - No regulations issued to date



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You might ask, “Well, what happens if I don’t comply”. As you can see on this slide, you could be subject to either civil fines and/or criminal penalties, including jail time, so these are not regulations that you can really afford to ignore.

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# HIPAA Privacy Basics



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## HIPAA Privacy Basics

- **Intention Of HIPAA Privacy Regulations**
  - Control the use and disclosure of protected health information (“PHI”) by covered entities
  - Give individuals rights with respect to their own PHI in the hands of covered entities



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Let's jump right into Privacy basics. The Privacy Regs have 2 purposes. The first purpose is to control the use and disclosure of health information held by covered entities, and second, to give individuals rights with respect to their health information. The basic HIPAA Privacy Rule is that your group health plan cannot use or disclose health information, in a way that is not permitted by the rule. This rule ensures compliance by imposing a burden of many procedures and administrative safeguards on covered entities, such as our group health plan.

## HIPAA Privacy Basics

- **Protected Health Information (“PHI”)**
  - Created or received by a health care provider, health plan, employer, or health care clearinghouse
  - Relates to past, present, or future physical or mental health condition; provision of health care; or payment for provision of health care
  - From which one could identify an individual
  - In any form – electronic, paper, oral



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Now, before we cover the Privacy Rule requirements and how they apply to our group health plans, it's important for everyone to understand the HIPAA jargon. These terms will be used a lot throughout this training.

The HIPAA terms fall into 3 general categories.

First, several terms used to describe different kinds of health information.

Second, several terms describe who must comply with the Rule, and

finally, a term describing common functions involving medical or payment information.

The first term relating to health information is protected health information. Protected health information is key to the Privacy Rule because the Regulation defines it and then governs what you can do with it internally and who you can give it to externally, what the Rule calls uses and disclosures. Protected health information is any information relating to participants or beneficiary's health benefits from which they can be identified. Now, keep in mind that the information does not need to include medical data or diagnoses to be protected.

For instance, if you have enrolled in the PPO option of our group health plan, your name and choice of plan are considered protected health information. Protected health information can be contained on paper, in electronic media, or it can be oral.

## HIPAA Privacy Basics

- **Individual Information is PHI if held by the GHP**
  - Individual's Name, Address, DOB, Marital Status, Dependent Information, and SSN
  - Individual's Choice of Health Plan, Amount of Premiums/Contributions for Individual Coverage
  - Active, Retiree or Enrolled in Medicare Status



Thompson - Section 201.

## HIPAA Privacy Basics

- **De-Identified Information**
  - PHI with all identifying data removed
  - Certain limited information may remain
  - Safe harbor: all listed data removed and no actual knowledge that remaining information is identifiable
  - Not subject to regulations



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De-identified information is the term the Regulations give to information that no longer identifies an individual. If you remove enough of the information from a record, it will become de-identified, and you can do whatever you like with it, without regard to HIPAA. The Rule contains specific requirements for cleansing data, so that it qualifies as de-identified. Today, you might be using protected health information when de-identified information would work just as well. Whenever possible, we want to use de-identified information.

## HIPAA Privacy Basics

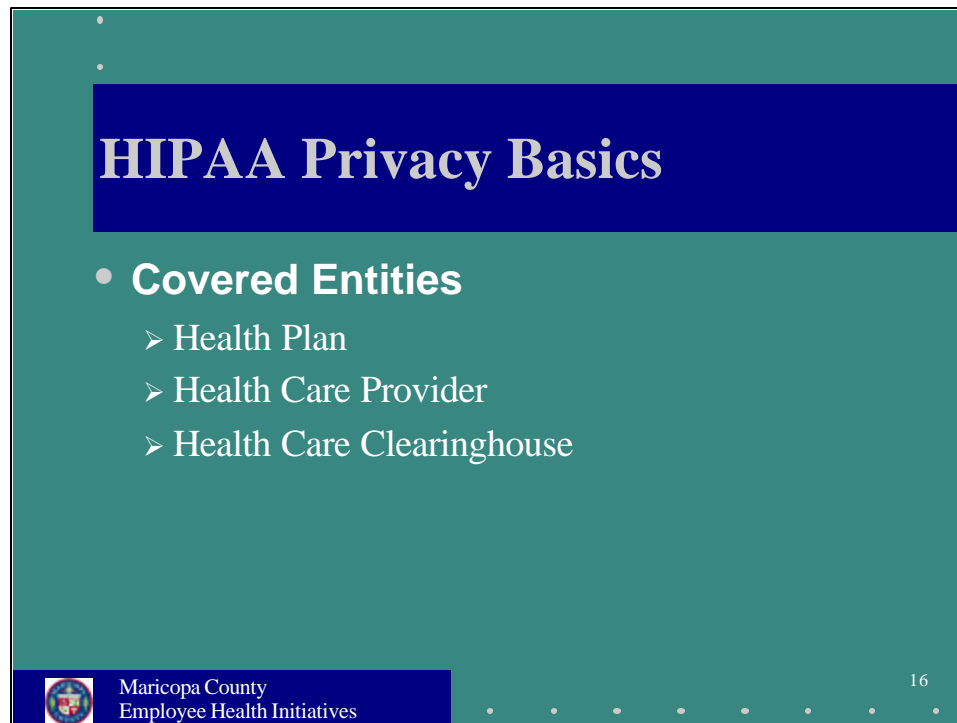
- **Summary Health Information (“SHI”)**

- Definition:

- ♦ Individually identifiable health information from which all “de-identifying” elements have been removed, but
- ♦ Which can still be PHI because it is reasonably likely that individuals can be identified



Now, one last term, summary health information, or SHI, is a term created by HHS that applies only to group health plans. Summary health information, like de-identified information, has been cleansed of almost all identifying characteristics but can still be PHI it is still reasonably likely that individuals can be identified. For example, there could be one person in your group health plan with a heart/lung transplant.



The slide features a dark blue header with the title 'HIPAA Privacy Basics' in white serif font. Below the header, on a teal background, is a bulleted list of 'Covered Entities'. The list includes three items: 'Health Plan', 'Health Care Provider', and 'Health Care Clearinghouse', each preceded by a right-pointing arrow. At the bottom left, there is a small circular logo for Maricopa County and the text 'Maricopa County Employee Health Initiatives'. The number '16' is positioned at the bottom right of the slide content area.

- **HIPAA Privacy Basics**
- **Covered Entities**
  - Health Plan
  - Health Care Provider
  - Health Care Clearinghouse

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The HIPAA Privacy Rules apply only to the 3 types of entities listed on this slide, and note that employers are not listed and are not directly covered by the Rule.



# HIPAA Privacy Basics

- **What is a Health Plan**

- Examples of Health Plans
- Example of entities/programs that are not Health Plans



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Health plans are the first type of entity covered by the Rule.

Health plans include any individual or group plan that provides or pays for the cost of medical care.

Examples of Health Plans:

Group Health Plans (Maricopa County) - an employee welfare benefit plan which includes fully insured and self insured plans, Health Maintenance Organizations (HMOs), Health Insurance Issuer - CIGNA, Medicare, Medicaid (AHCCCS), Medicare Supplemental Insurance Policies (MediGap), TriCare (CHAMPUS), Veteran's Health Care Program, Active Military Health Care Program, Indian Health Services, Federal Employees Health Benefit Program (FEHBP), State Children's Health Insurance Program (CHIP) - KidsCare, Medicare+Choice, Dental or Vision Benefits, Flexible Spending Arrangement,

Examples of entities that are not a Health Plan: Employer, Workers Compensation, Disability Income Insurance, Food Stamps, WIC, DES

## HIPAA Privacy Basics

- **What is a Health Care Provider**

- Examples of Health Care Providers
- Electronic Transmission of Data



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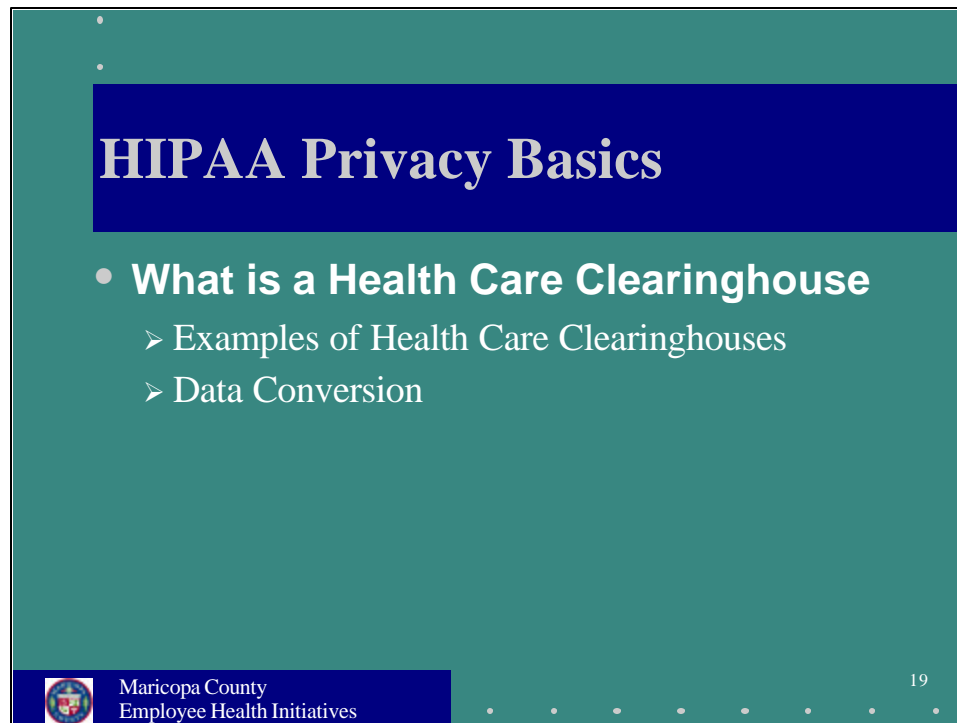
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Health care providers, the second type of entity covered by the Rule.

Health care providers are the suppliers of medical or health services who furnish, bill, or are paid for health care. They are subject to HIPAA if they transmit the data electronically.


Electronic data - Standard transactions includes claims submission and/or encounter information, claims payment and remittance advices, claims status, eligibility, enrollment and disenrollment, COB, referrals, and premium payment.

Examples: Hospitals, SNFs, Outpatient facilities, Physicians, Providers of lab, durable medical devices (DME).



# HIPAA Privacy Basics

- **What is a Health Care Clearinghouse**
  - Examples of Health Care Clearinghouses
  - Data Conversion

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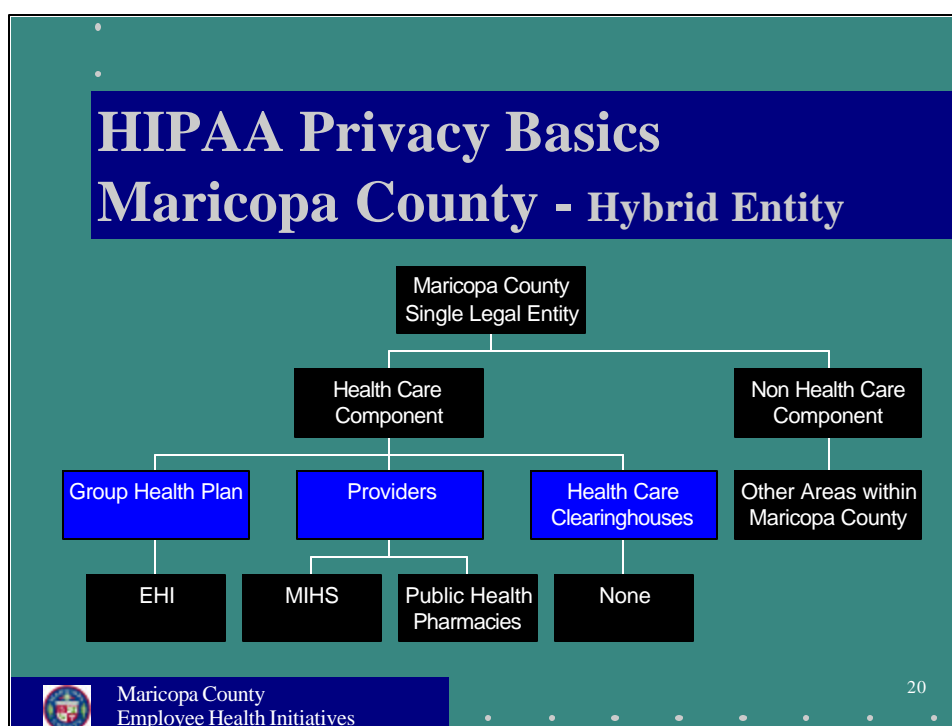
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Health Care Clearinghouses process health care transactions on behalf of health care providers and/or plans.

Clearinghouses convert data from a non-standard format into a standard format.

Examples: Billing Services, Repricing Companies

We will not be discussing this further today.



Hybrid Entity - A single legal entity with health care and non-health care components, and at least two covered entities (in the blue).

Ensure that the health care component complies with HIPAA by not disclosing PHI to another component of the entity unless that is permitted under the privacy rules, and erecting fire walls protecting against improper PHI user disclosure within or by the organization.

# HIPAA Privacy Basics

- **Business Associates**

- Internal/External
- Service providers who act on behalf of a covered entity
- Business associates perform a function or activity for the covered entity involving the use or disclosure of PHI
- HIPAA imposes special business associate contracting requirements



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The final term relating to entities covered is business associates.

Maricopa County has internal and external business associates.

Examples of the internal business associates are: eGov, Internal Audit, HCM, Assessor, Finance, etc.

Examples of the external business associates are: WHI, United Concorida, Buck, ERISA (COBRA) and ASI (FSA)

Internal business associates do not require a signed business agreement because Maricopa County is a hybrid entity.

External business associates do require a signed business agreement. These agreements are sent out through Materials Management.

## HIPAA Privacy Basics Business Associates

- **BAs are also anyone who performs any of the following services for the GHP and who receives PHI**
  - Legal
  - Actuarial
  - Accounting
  - Consulting
  - Data aggregation
  - Management
  - Administration
  - Accreditation
  - Financial services



The regulation also helps us by specifically enumerating entities that are automatically business associates, if they receive protected health information from or on behalf of your group health plan.

## HIPAA Privacy Basics Business Associates

- **Business Associate Rule**

- A GHP cannot disclose PHI to its BA without “satisfactory assurances” from the BA that it will safeguard the information
- “Satisfactory assurances” generally means a contract (Business Associate Agreement)

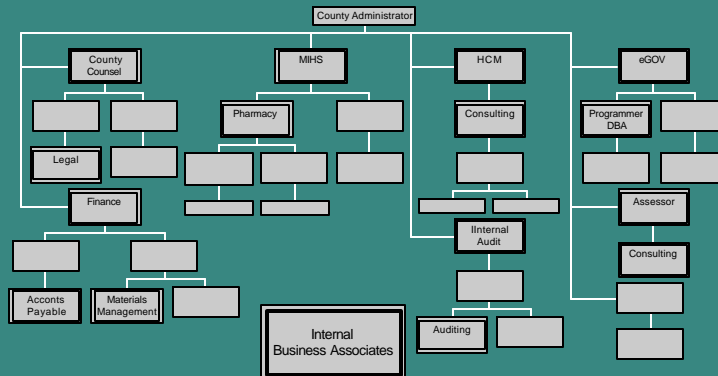


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Our group health plan cannot disclose protected health information to a service provider business associate, unless it has what the Rules calls satisfactory assurances that the service provider will safeguard that information. HIPAA requires us to include Special Contract Provisions in our Service Provider Agreements. These Contract Provisions are intended to require service providers to follow the key Provisions of the HIPAA Privacy Rule.

# HIPAA Privacy Basics





## HIPAA Privacy Basics

- **TPO: Treatment, Payment, Health Care Operations (“TPO”)**
  - **Treatment:** the provision, coordination, or management of health care (including coordination or management with a third party, including referrals) by one or more *health care providers*



Then, finally, the last term is treatment, payment, and healthcare operations (TPO), because it covers many common business functions engaged in by or on behalf of our group health plan. The general idea behind this term is that our group health plan may use or disclose protected health information, if it's doing so for purposes of payment or health care operations.

On this slide, the T in TPO stands for treatment. We're not going to spend a lot of time discussing it because only medical providers engage in treatment; our group health plan is not a provider of medical services.

# HIPAA Privacy Basics

- **TPO (cont'd)**

- **Payment:**

- ♦ A plan's activities to obtain premiums or to determine coverage and benefit payments, and
    - ♦ A provider's activities to obtain reimbursement for care provided

- **Payment Examples**



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Payment is defined broadly to include premium payments, the terminations of coverage or benefits, and all activities relating to those functions.

Examples of Payment:

- Determinations of eligibility/coverage
- COB
- Determination of Cost Sharing Amounts (For example, cost of a benefit, plan maximums, and copayments as determined by an individual's claim).
- Adjudication of Claims
- Subrogation and reimbursement of Claims
- Billing
- Claims Audits
- Medical Necessity Reviews
- Utilization Reviews (e.g. Precertification, Concurrent Review, Retrospective Review)
- Disclosure to collection agencies

Thompson - Section 213

## HIPAA Privacy Basics

- **TPO (cont'd)**

- **Health care operations:** Related to the covered entities functions as a Group Health Plan. These activities do not have to be related to treatment or payment.
- Examples of Health Care Operations



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Finally, the O in TPO stands for health care operations. This is a broad category of activities related to the business of providing health benefits.

- Examples of health care operational activities:
  - Quality assessment
  - Population-based activities - Case Management
  - Rating provider and plan performance - Credentialing
  - Underwriting
  - Audits and Fraud Detection
  - Business Planning
  - General Administration
  - Disease Management

Thompson - Section 215

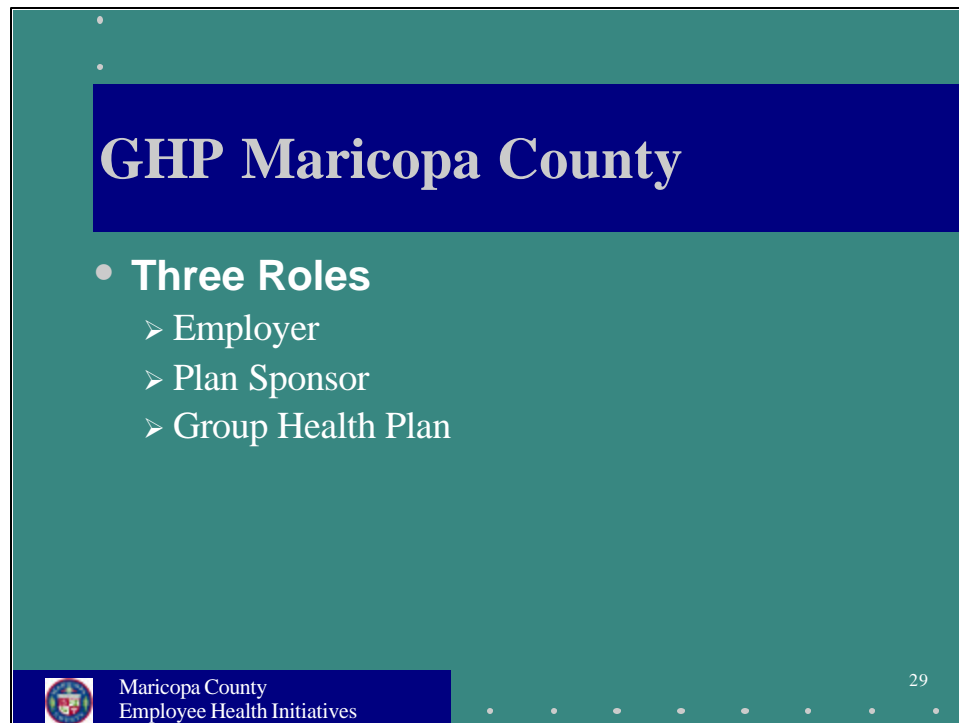
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## Maricopa County - GHP



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## GHP Maricopa County

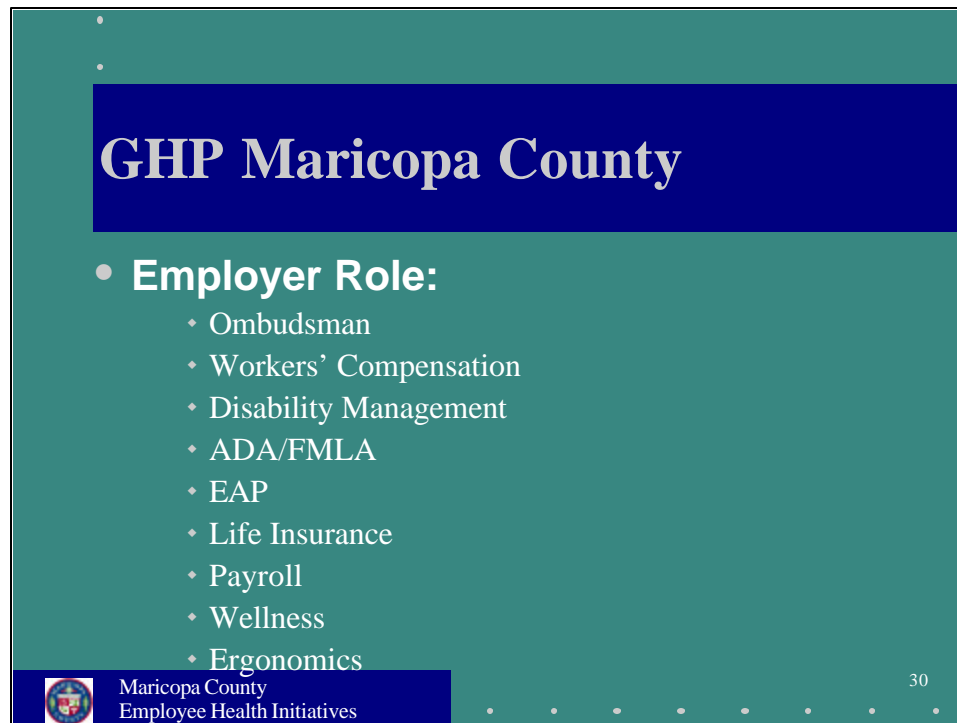
- **Three Roles**
  - Employer
  - Plan Sponsor
  - Group Health Plan

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In relation to PHI and how it impacts Maricopa County's Group Health Plan, we have three different roles to consider.

A presentation slide with a teal background. At the top, a dark blue horizontal bar contains the text "GHP Maricopa County" in white serif font. Below this, a bulleted list titled "Employer Role:" lists various functions. At the bottom left is the Maricopa County seal and the text "Maricopa County Employee Health Initiatives". At the bottom right is the number "30".

**GHP Maricopa County**

- **Employer Role:**
  - ♦ Ombudsman
  - ♦ Workers' Compensation
  - ♦ Disability Management
  - ♦ ADA/FMLA
  - ♦ EAP
  - ♦ Life Insurance
  - ♦ Payroll
  - ♦ Wellness
  - ♦ Ergonomics

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Maricopa County is the employer. This slide shows employer-related functions.



A presentation slide with a teal background and a dark blue header bar. The header bar contains the text "GHP Maricopa County" in white. Below the header, the text "Plan Sponsor Role:" is followed by a bulleted list of "Plan Administrative Functions" which includes "Financial Activities" and "Procurement Activities". At the bottom left is the Maricopa County logo and the text "Maricopa County Employee Health Initiatives". At the bottom right is the number "31".

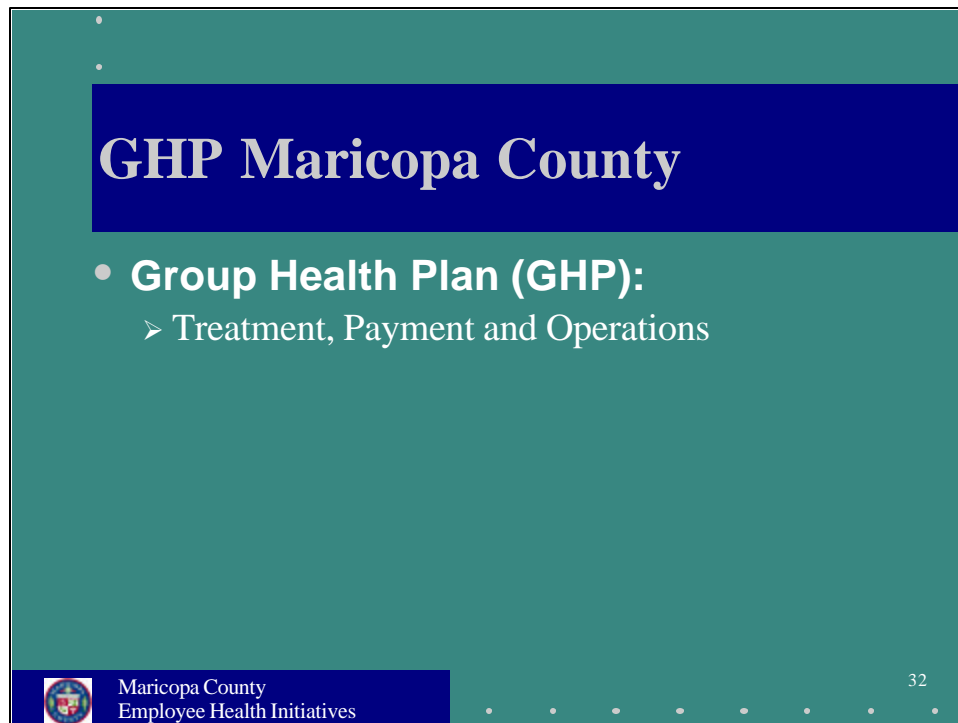
## GHP Maricopa County

- **Plan Sponsor Role:**
  - Plan Administrative Functions
    - Financial Activities
    - Procurement Activities

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I should probably say a few words at this point about who is the plan sponsor. For purposes of the Privacy Rule, the plan sponsor is any one at the employer who is involved in plan administration who received or who is likely to receive protected health information. It can also include other individuals involved in the actual day-to-day administration, for example, some personnel in the Employee Health Initiatives Division. Whether or not you're a member of the plan sponsor is determined by function. That is to say it doesn't matter where you sit in the company or what department you're in. If you're involved in plan administration and you get protected health information, you're part of the plan sponsor. It's also the case that you may wear 2 or more hats. One employee could spend half their time working on health plan administration, and half on life insurance plan administration. When they're wearing their health plan hat, they're part of the plan sponsor. These are the employees that we treat as the workforce of the group health plan.




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## GHP Maricopa County

- **Group Health Plan (GHP):**
  - Treatment, Payment and Operations

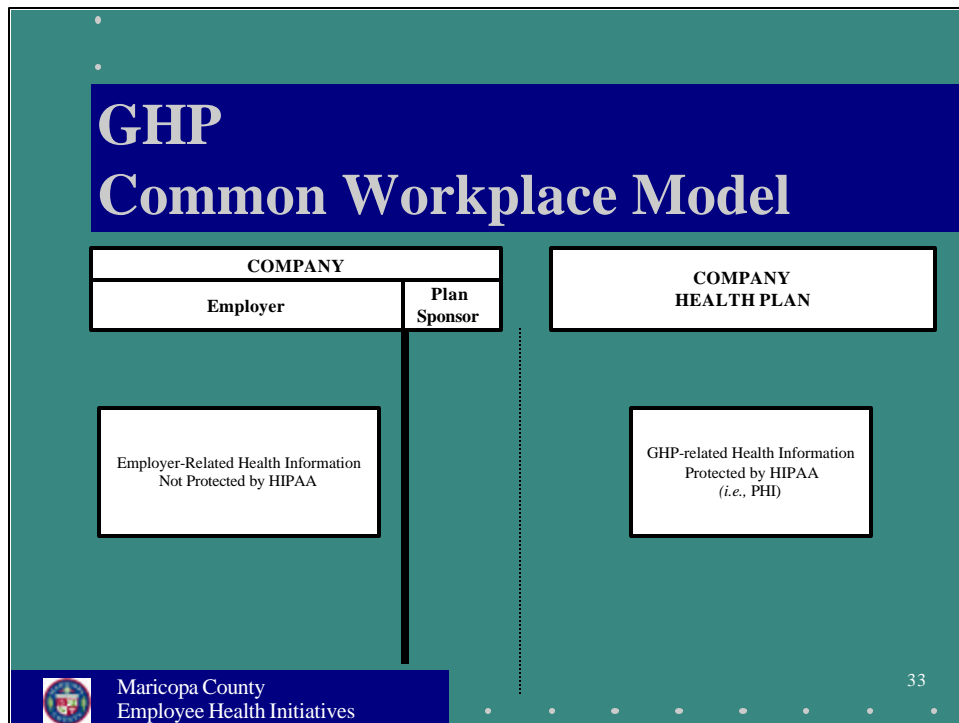
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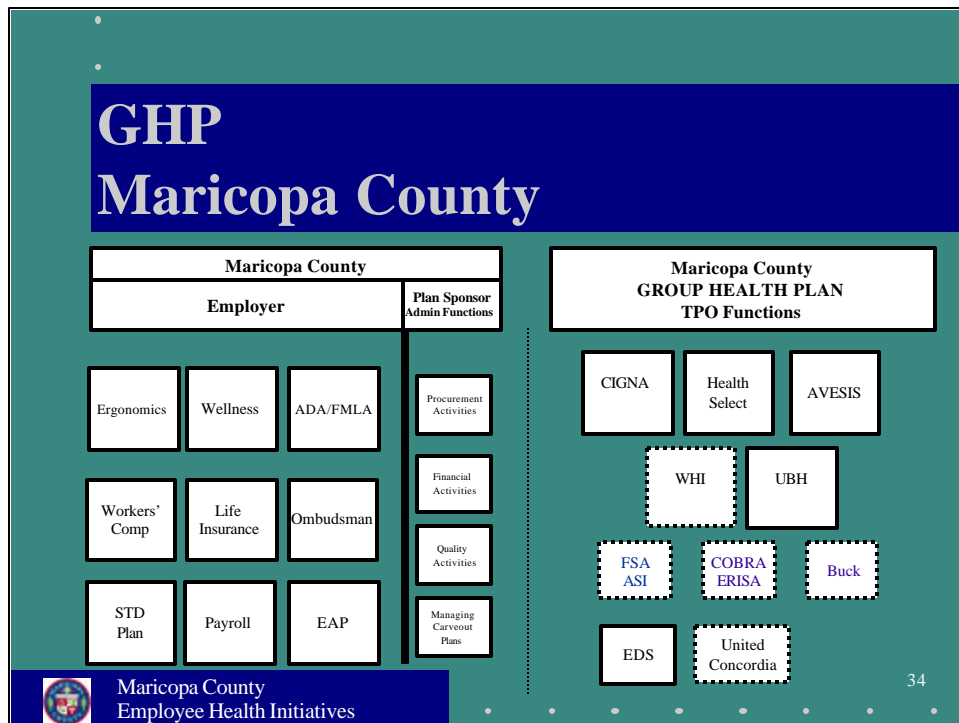
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The GHP handles TPO.

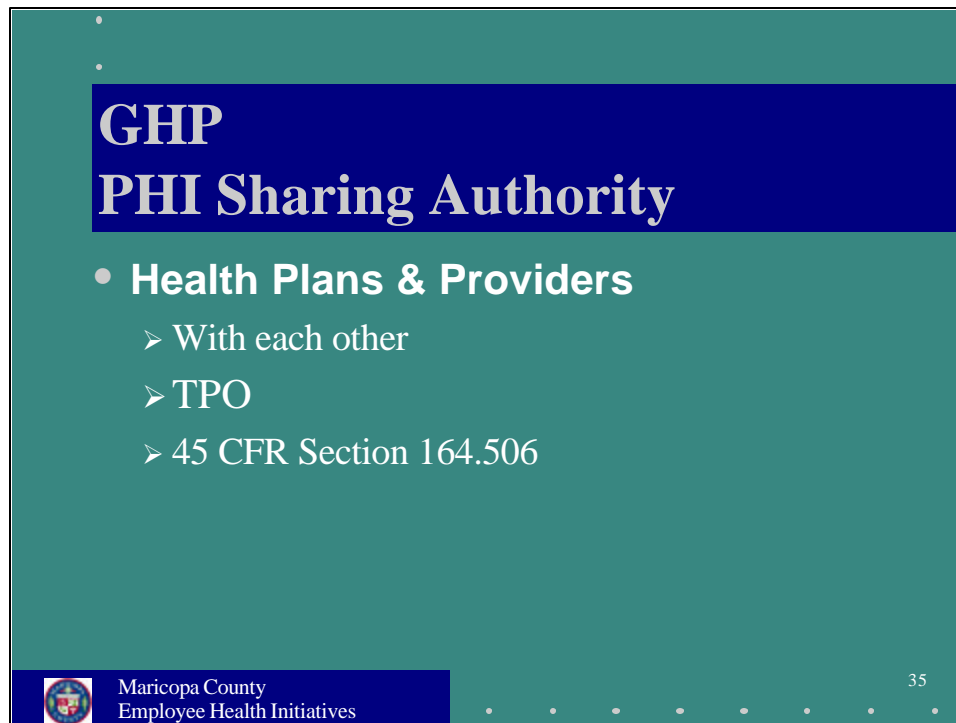




This slide shows the analysis we performed. Group health plan information is on the right side of the double bold line. It is protected by HIPAA. It is PHI. Health information in the hands of the employer is on the left of the double bold line. It is not protected by HIPAA. Other Laws might apply, but HIPAA doesn't. Once health information is in the hands of the employer, it is not protected health information, and it not protected, if it has gotten into the hands of the employer according to an authorized release.



On the right side of the chart is the group health plan, and on the left side is the employer. The employer is divided into 2 pieces, the employer piece and the plan sponsor. If we have properly made our Plan Amendments, protected health information can flow from the health plan across the dotted line to the plan sponsor for its use in plan administrative purposes, but it can never flow from either the health plan or the plan sponsor to the employer, that is across the double-boldded line, without authorization from the employee.



The slide features a dark blue header with the text "GHP PHI Sharing Authority" in white. Below the header, a bulleted list is presented on a teal background. The list includes "Health Plans & Providers" as a main category, with sub-points: "With each other", "TPO", and "45 CFR Section 164.506". At the bottom left, there is a logo for Maricopa County Employee Health Initiatives. The number "35" is located in the bottom right corner of the slide area.

- **GHP PHI Sharing Authority**
  - **Health Plans & Providers**
    - With each other
    - TPO
    - 45 CFR Section 164.506

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Now we've talked about all the roles and functions under each role. Let's talk about what authority gives permission to share PHI with Maricopa County.

Health Plans can share with each other.

Providers can share with each other.

Health Plans and Providers can share with each other.

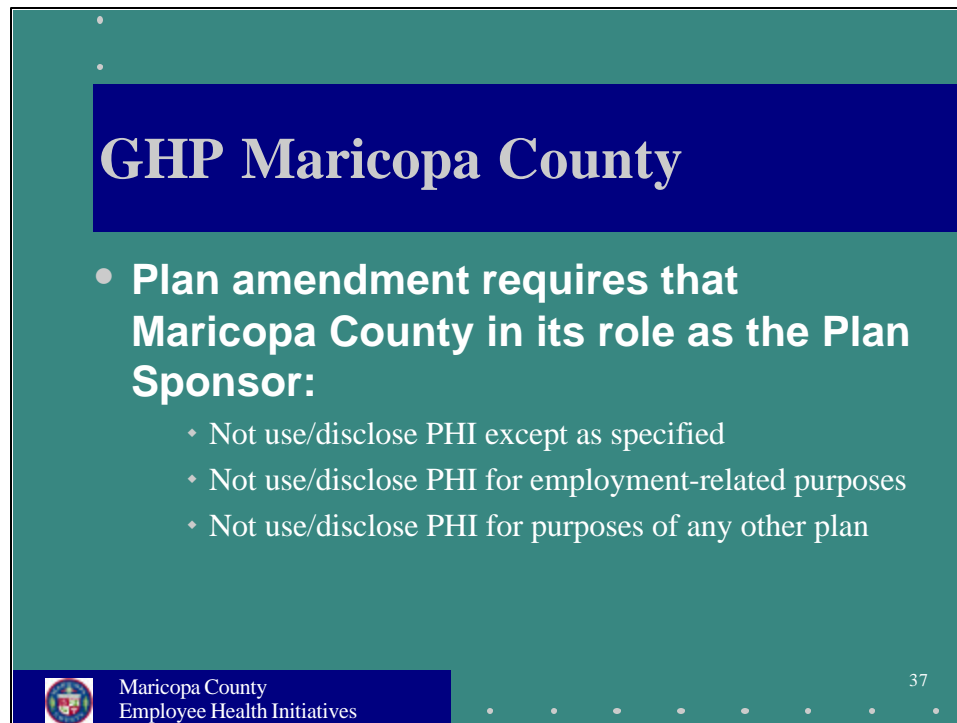
Health Plans and Providers can share PHI with the individual.

Maricopa County is a Group Health Plan, which is a type of Health Plan which allows us to share information with the Provider for TPO.

## GHP PHI Sharing Authority

- **Maricopa County in its ROLE as the GHP can share with Maricopa County in its ROLE as the Plan Sponsor**
  - TPO
  - Plan Amendment






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## GHP Maricopa County

- **Plan amendment requires that Maricopa County in its role as the Plan Sponsor:**
  - Not use/disclose PHI except as specified
  - Not use/disclose PHI for employment-related purposes
  - Not use/disclose PHI for purposes of any other plan

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This slide shows what the plan sponsor must promise not to do in the Plan Amendment. Basically, it must promise not to disclose PHI for the wrong reasons or to the wrong entities.

## GHP Maricopa County

- **Plan amendment also must require that plan sponsor (cont'd):**
  - Will report any inconsistent acts to GHP
  - Will honor individual rights to PHI
  - Will make books/records available for audit
  - Will return or destroy PHI if feasible
  - Will require BAs to agree to same restrictions



This slide lists more things that the plan sponsor must promise to do with the protected health information in its possession. It must make the information available to HHS, if necessary for audits. It must promise to return or destroy protected health information. It must require any other business associates to agree to the same restrictions

## GHP PHI Sharing Authority

- Maricopa County in its ROLE as the GHP can share with the **Health Plan**
  - TPO
  - Certification indicating that we amended the Plan Document



## GHP PHI Sharing Authority

- Maricopa County in its ROLE as the GHP can share with the **External Business Associates**
  - TPO
  - Business Associate Agreements





## GHP PHI Sharing Authority

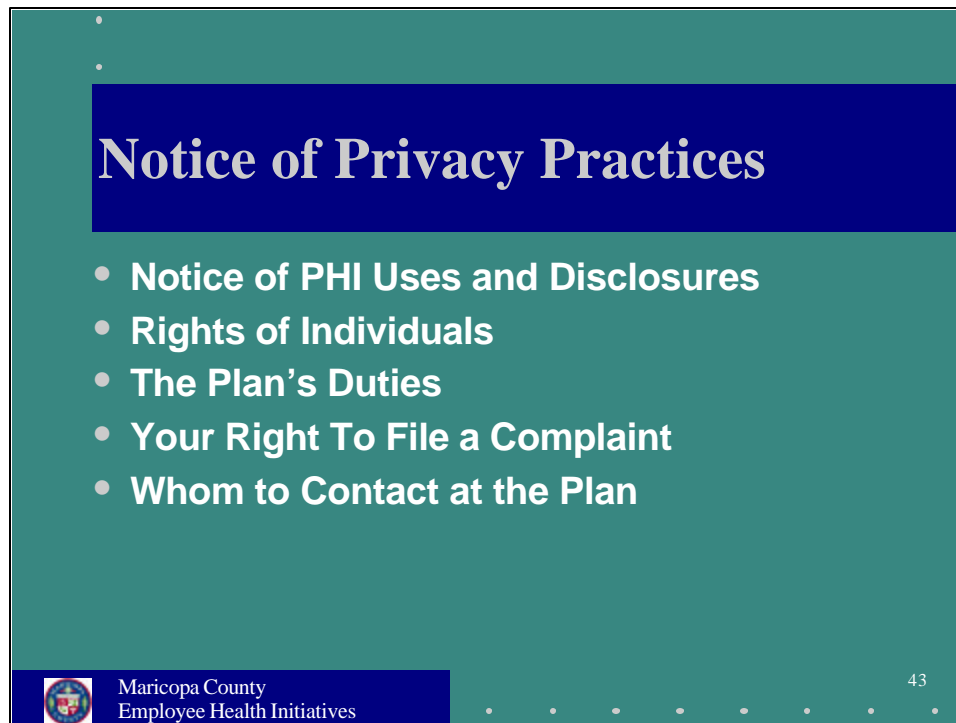
- Maricopa County in its ROLE as the GHP can share with **Maricopa County in its ROLE as the employer**
  - Any PHI
  - Signed HIPAA Compliant Authorization from the Employee



## GHP PHI Sharing Authority


- **The Health Plan can share PHI in the same ways as the Group Health Plan**
  - TPO
  - 45 CFR Section 164.506





**Notice of Privacy Practices**

- Notice of PHI Uses and Disclosures
- Rights of Individuals
- The Plan's Duties
- Your Right To File a Complaint
- Whom to Contact at the Plan

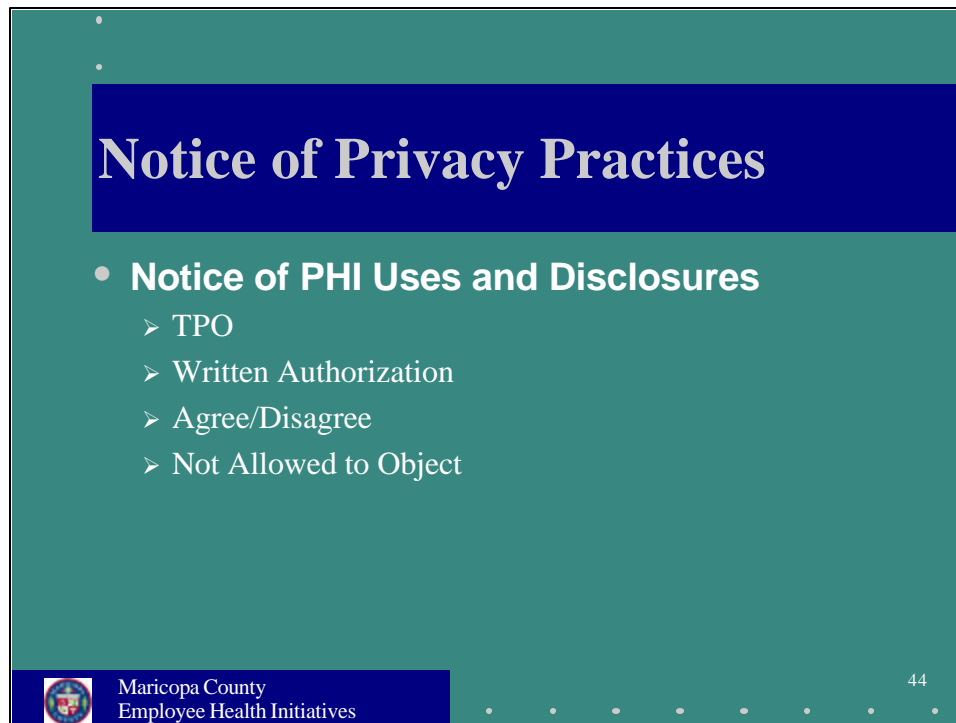
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(Refer to Notice in handouts)


Next we are going to discuss Maricopa County's Group Health Plan's Notice of Privacy Practices. This notice will be distributed to all Maricopa County employees on Friday, April 4th with their paychecks. This notice is written in legalese.

This slide outlines the sections in the notice. We are going to discuss each section.



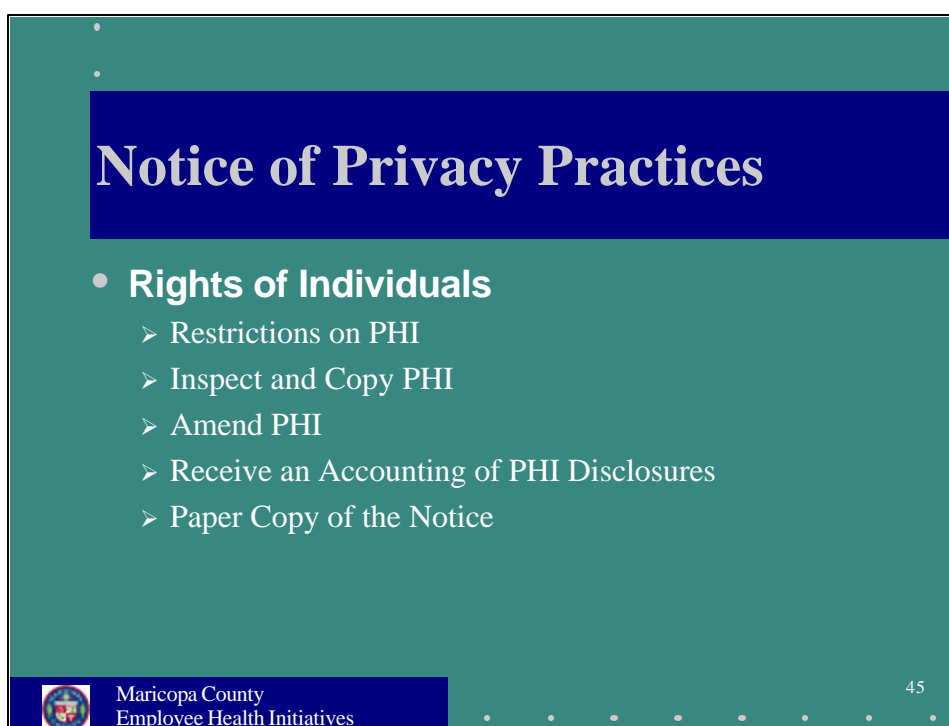
## Notice of Privacy Practices

- **Notice of PHI Uses and Disclosures**
  - TPO
  - Written Authorization
  - Agree/Disagree
  - Not Allowed to Object


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- Vendors can share PHI for TPO. They will send their own Privacy Notice.
  - The Plan and BAs can share PHI for TPO. BAs have written agreements with the Plan to protect PHI.
  - The Plan may share with Plan sponsor due to Plan Document Amendment.
- Written authorization is needed to release PHI for employer-related functions.
  - Ombudsman, fitness for duty, STD, return to work, EAP, etc.
  - Authorization can be revoked.
  - Certain PHI may be further protected under state law.
- Must give opportunity to agree/disagree on PHI disclosure to family/relatives.
- Certain PHI may be disclosed without authorization or opportunity to object.



A presentation slide with a teal background and a dark blue header. The header contains the title "Notice of Privacy Practices" in white serif font. Below the header, the text "Rights of Individuals" is preceded by a white bullet point. Under this, five items are listed, each preceded by a white right-pointing arrow. At the bottom left is the Maricopa County Employee Health Initiatives logo and name. At the bottom right is the number 45.

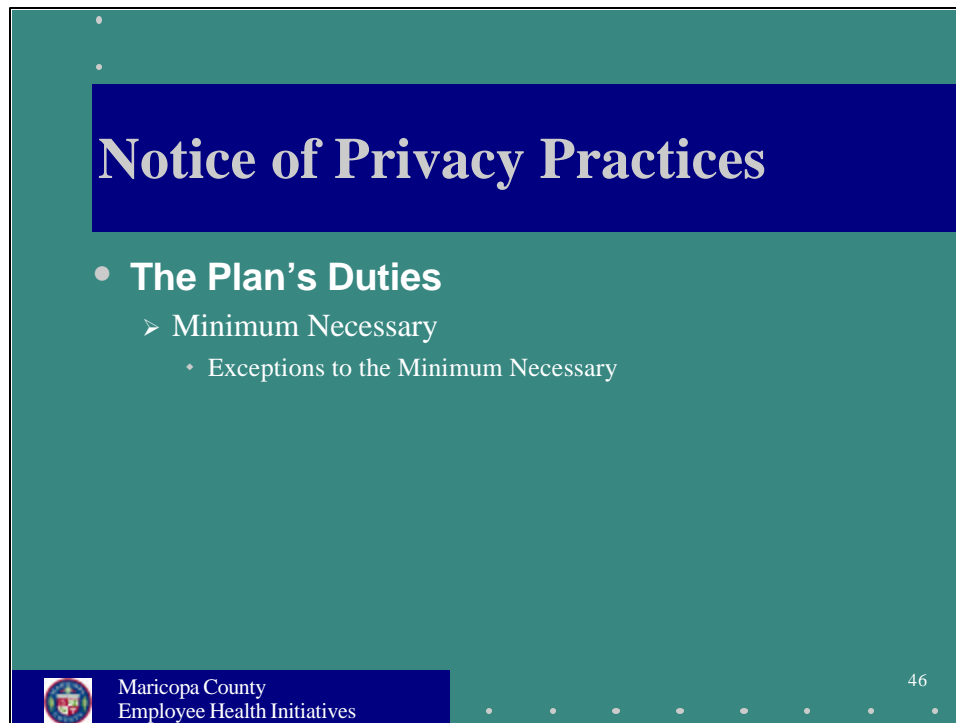
## Notice of Privacy Practices

- **Rights of Individuals**
  - Restrictions on PHI
  - Inspect and Copy PHI
  - Amend PHI
  - Receive an Accounting of PHI Disclosures
  - Paper Copy of the Notice

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- May request restriction on use of PHI for TPO or to family/relatives.  
Plan is not required to agree.
- May inspect and copy PHI contained in a designated record set.  
The Plan must comply within set timeframes. Must complete request form.  
If request is denied, notice will be given with denial reason.
- May request to amend PHI in the designated set. The Plan must comply within set timeframes. Must complete request form. If request is denied, notice will be given with the denial reason.
- May request an accounting of PHI disclosures, but not for TPO, to the individuals, before the compliance date, or based on a written authorization.  
The Plan must comply within set timeframes. Must request using form.  
May charge for the accounting.
- EHI must provide a copy to anyone who requests it.




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## Notice of Privacy Practices

- **The Plan's Duties**
  - Minimum Necessary
    - Exceptions to the Minimum Necessary

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- Exceptions:
  - to providers for treatment
  - to the individual
  - to HHS
  - required by law
  - required for Plan's legal compliance
- Notice does not apply to de-identified PHI that can't be used to identify individuals

# Notice of Privacy Practices

- **Your Right to File a Complaint**
  - Employee Health Initiatives Manager
  - U.S. Department of Health & Human Services
  - Plan Must Refrain from Retaliation



# Notice of Privacy Practices

- **Whom to Contact**
  - Employee Health Initiatives Manager





## Compliance

- **Administrative Requirements**

- Maintain and provide privacy notice
- Designate privacy official
- Train workforce
- Implement safeguards
- Implement complaint process and sanctions
- Mitigate harm



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There are certain administrative requirements we need to implement to be HIPAA compliant.

We've talked about the individual rights, Notice of Privacy Practices and the Plan Amendment.

The group health plan has to designate a Privacy Official, and this person will be responsible for developing and implementing the group health plan's Privacy Policies and Procedures.

The group health plan workforce must be trained.

Reasonable safeguards include: a clean desk policy, locking up the main filing cabinets and individual overhead filing cabinets, within EHI shred all materials that have PHI, password protected screen savers, develop a sign that will be posted which will tell the public not to go any individuals' desk without being announced, require two pieces of information to identify caller, big closed container to store enrollment forms, no sharing of passwords to any application, when meeting with employees all PHI should be turned over, certain EHI workforce and internal business associates will need to sign a confidentiality agreement, etc.

A complaint process will be implemented, and we'll have to have procedures in place to mitigate harm, if health information is improperly used or disclosed.

## Compliance

- **Administrative Requirements (cont'd)**
  - No intimidation or retaliation
  - No waiver of rights
  - Implement policies and procedures
  - Document and maintain all communications, actions



The group health plans cannot intimidate their participants or beneficiaries when those persons exercise their HIPAA rights.

The group health plan can't seek a waiver of HIPAA rights from participants or beneficiaries before enrolling them or before providing benefits.

Policies and procedures will be implemented and followed.

The group health plan has to maintain all communications required to be made under the Rule.

## Compliance Summary

- **Elements Of Group Health Plan Compliance**
  - Use/disclosure requirements
  - Individual rights
  - Privacy notice
  - Administrative requirements
  - Plan amendments



This slide shows the 5 major areas of compliance. Next, we are going to talk about some common workplace situations.

## Common Workplace Situations

- **Job-Related Issues**

- Pre-employment physical, fitness-for-duty, drug-free workplace programs, DOT-required physicals
  - ♦ Received in “employer” role – no HIPAA responsibilities
  - ♦ Need employee to authorize provider to release results – employer can make this a condition of employment
  - ♦ Other laws may govern confidentiality of information



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First, we thought we'd cover topics loosely grouped together, as job-related issues.

Let's look at pre-employment physicals, fitness-for-duty, drug testing, etc.

The situation here is that your employee goes to the doctor and obtains a physical or other assessments, and you, the employer, need that information either to satisfy your own Policies or another Law.

You are receiving this information in your capacity on the left hand side of the chart.

You're receiving this medical information, in your role, as employer, not the group health plan.

Since employers are not covered under HIPAA, you have no HIPAA responsibilities with respect to that information.

You might have other responsibilities to keep it confidential, under other Laws.

## Common Workplace Situations

- **Job-Related Issues (cont'd)**

- Doctors' notes

- Received in "employer" role – no HIPAA responsibilities
    - No authorization needed if provided voluntarily directly from employee

- FMLA/ADA

- Health information generally received in "employer" role
    - Need employee to authorize provider to release results – employer can make this a condition of employment
    - FMLA/ADA impose confidentiality requirements



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Now, there is a wrinkle because the doctor who provided the services to the employee is covered under HIPAA, and can't release the results to you, the employer, unless the doctor has an authorization from the employee permitting him/her to do so.

The employee is not authorizing you to do anything because you're not covered in this situation. The employee is authorizing the doctor to release the information to you.

The same analysis applies with respect to the FMLA and ADA. Let's take the ADA. You may need proof of disability before you provide a reasonable accommodation, and this is really just like the fitness-for-duty example.

You receive medical information from a physician that your employee went to, and you receive this on the left-hand side of the chart, as the employer, so HIPAA imposes no requirements.

Again, other Laws might impose requirements, but HIPAA does not. Similarly, the physician will need an authorization before disclosing the information to you.

What do you do if the employee doesn't give the physician the authorization? You don't have to provide the reasonable accommodation.

## Common Workplace Situations

- **Wellness Programs**

- Health fairs
- Flu shots
- Fitness centers
- Blood drives



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There are various health-related events sponsored by employers from time-to-time. For Health Fairs, you need to ask yourself, “Who’s the sponsor and whether any information will be collected, as opposed to be given just to the individual, and if information is collected, who’s going to get it”.

If the employer is the sponsor of the Health Fair and collects no information and the group health plan is not involved at all, it’s not likely that there are going to be any HIPAA issues for the employer. The individuals providing services at the Health Fair might be covered providers under these Regulations, and if they are, they would have to comply, but the employer would not.

The same approach for flu shots. If someone is sitting in the lobby of your building giving flu shots to anyone who shows an I.D. card, the employer has no involvement and gets no information and has no HIPAA implications. If, on the other hand, you have a member of your staff, a covered provider on your staff, a doctor or a nurse, giving flu shots and you somehow coordinate that piece of treatment with your health plan, there might be HIPAA implications, and you’ll have to worry about it.

What about your fitness center? It’s quite possible for a fitness center to be a provider under these Regulations. The question for the fitness center will be whether it is a covered provider, and that depends on whether it conducts the standard electronic transactions. That will not be the case for our fitness center.

Often, fitness center personnel collect medical data about employees who are using the center, and you might want to look into why that’s being done and what’s happening to that information, but it’s not likely that it will raise HIPAA issues for you.

The last event is the Blood Drive. Interestingly enough, the Regulations actually take Blood Drives completely out of the HIPAA box. Blood Drives are not considered to be treatment, in any form. They’re someone who’s giving away their blood rather than seeking treatment, so they’re just not covered by HIPAA at all.

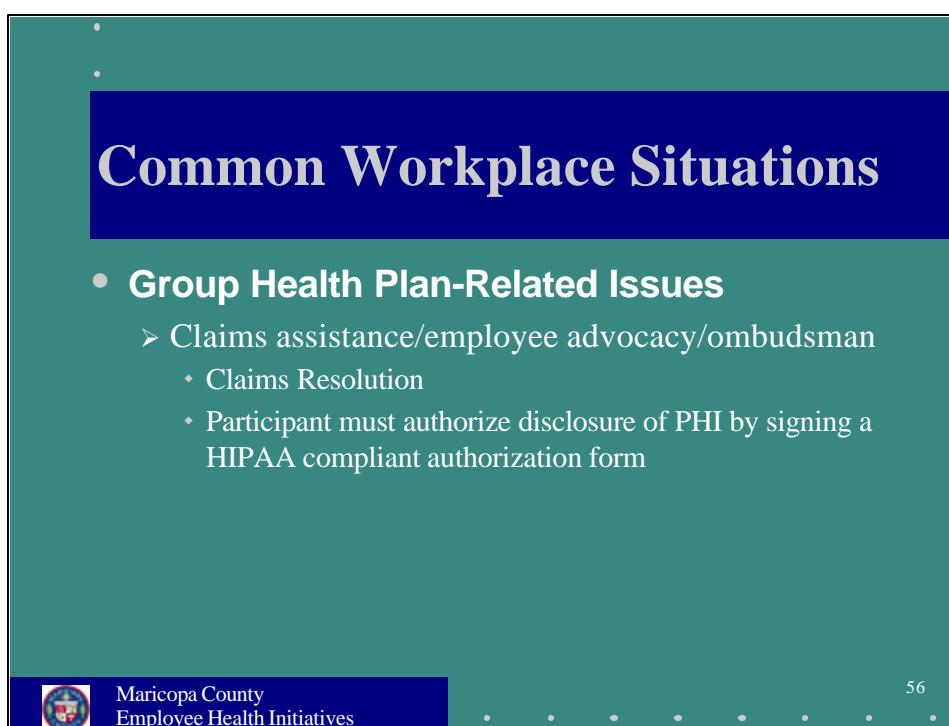
## Common Workplace Situations

- **Other benefit plans involving health information – e.g., disability insurance, life insurance, AD&D**
  - Excluded from definition of covered health plan
  - Health information provided to employer as part of application or claims process not covered by HIPAA



You may have questions about other benefit plans involving health information, such as disability insurance, life insurance, etc., and these are plans that are excluded from the definition of covered health plans, so they're not covered by HIPAA at all.

For example, information provided to you, as the employer, during a life insurance application process is not protected health information under HIPAA, even though it is medical information, and HIPAA will not apply to the use and disclosure of that information.



## Common Workplace Situations

- **Group Health Plan-Related Issues**
  - Claims assistance/employee advocacy/ombudsman
    - Claims Resolution
    - Participant must authorize disclosure of PHI by signing a HIPAA compliant authorization form

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This is the employee advocacy questions. The Benefits Department wants to be able to keep helping participants, in the way they always have.

You will be able to keep helping. The question is what you will have to do to be able to do it.

Answering participant questions is definitely a part of plan administration. In our plan amendment we made sure that everyone who helps employees, in this manner, is identified, as part of the plan sponsor.

You will have to get employee authorizations each time you want to do this kind of advocacy.

You can get an authorization that can cover the specific matter for an employee, if it's going to be the kind of issue that takes extended intervention.

But you can't get an on-going authorization that is general in nature.



## Common Workplace Situations

- **Group Health Plan-Related Issues**
  - Disclosures when absence of objection inferred
    - Communication with family members (*e.g.*, with employee about spouse or child)
    - Employee advocacy?
  - Personal representatives
  - Requests for confidential communications



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We touch on group health plan communications with participants and other family members. Most plan sponsors have always been sensitive to who can get information from the health plan, but usually the issue is whether it's okay to talk to someone who's not the plan participant.

The HIPAA issue is a bit different. The question under HIPAA is whether it's okay to talk to the participant about another family member's information, or vice versa, or to talk to either parent about a child.

For example, one of the Rules under the Privacy Regs permits a plan to disclose information about person A to person B, if the circumstances indicate that person A agrees with the disclosure.

Refer to Privacy Notice on how we will share this information..

I wanted to talk about a final group health plan related issue that has to do with COBRA enrollment and participation. When you enroll a participant in your group health plan, you are acting on behalf of the participant, not the group health plan, and so your activities are not subject to HIPAA.

The same rules apply to enrollment relating to COBRA. Now, once the COBRA participant is enrolled, he or she is no different than any other participant and all the rules we've been discussing will apply.



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## Common Workplace Situations

- **Litigation – Subpoenas And Discovery**
  - Subpoena with court order
    - Disclose only information expressly requested
  - Subpoena/discovery request without court order
    - Disclose if satisfactory assurance of either notice to individual or protective order

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Finally, there's a Special Rule for when the group health plan has to respond a Subpoena or a Discovery Request.

The overall basic principle here is that there are many things that you are doing now that can be accommodated under the Privacy Rules, but they don't get a complete pass.

You'll have to read the rule in each case and determine exactly what you can and cannot do.

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## Required Documentation



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## Required Documentation

- “Satisfactory assurances” that a BA will safeguard PHI (*i.e.*, a BA contract). § 164.502(e)(2).
- In a “hybrid entity,” the designated health care components. § 164.504(c)(3).
- The designation of “affiliated covered entities.” § 164.504(d)(2).
- All signed consents. § 164.506(b)(6).
- All signed authorizations. § 164.508(b)(6).
- All versions of medical surveillance/work-related injury notices. § 164.512(b)(1)(v).



## Required Documentation

- All versions of the privacy notice issued by the covered entity. § 164.520(e).
- Any oral agreement to termination of restrictions on uses of TPO. § 164.522(a)(2).
- Any agreed to restrictions on uses of PHI for TPO. § 164.522(a)(3).
- All designated record sets subject to access by individuals and the titles of persons/offices responsible for receiving requests for access. § 164.524(e).
- The titles of persons/offices responsible for receiving and processing requests for amendments. § 164.526(f).



## Required Documentation

- The information required to be included in an accounting, the actual accounting, and the titles of persons/offices responsible for receiving and processing requests for accountings. § 164.528(d).
- The identity of the privacy official. § 164.530(a)(2).
- The identity of the contact person or office. § 164.530(a)(2).
- The fact that required training has been provided. § 164.530(b)(2).



## Required Documentation

- All complaints received and their resolution.  
§ 164.530(d)(2).
- All sanctions applied to workforce members.  
§ 164.530(e)(2).
- Any changes in policies and procedures.  
§ 164.530(i)(2).
- The policies and procedures adopted to implement all standards, implementation specifications and other requirements. § 164.530(j)(1).

